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Rhetts letter
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on the
Right of Debate in Congress
1841



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LETTER

OF THE

HON. R. B. RHETT,

TO THE

EDITORS OF THE NATIONAL INTELLIGENCER

ON THE

RIGHT OF DEBATE IN CONGRESS.



WASHINGTON :

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1841.

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LETTER.

HOUSE OF REPRESENTATIVES,
August 25, 1841.

Messrs. BLAIR and RIVES:

GENTLEMEN: As the Editors of the National Intelligencer refuse to publish the enclosed communication, you will oblige me by giving it an insertion in your columns.

Your obedient servant,

R. B. RHETT.

To the Editors of the National Intelligencer:

GENTLEMEN: In your report of the proceedings of the House of Saturday last, the 21st inst. after recording the grounds on which I asked to be excused from voting on the resolution offered by Mr. SERGEANT, proposing to take the Bank bill out of the Committee of the Whole on the state of the Union, "on Monday next," you state:

"After Mr. RHETT had read his protest to the resolution, and requested that it be entered upon the record—

"Mr. DAVIS of Kentucky rose and asked him if he had not voted for a similar resolution to the one under consideration during the first session of the last Congress?

"[Mr. RHETT replied: No, never!]
"Mr. DAVIS rejoined: he would then read the record upon Mr. RHETT; but objection being made, Mr. D. was not allowed to do so. It is as follows:

"A motion was made by Mr. CLIFFORD that the rules in relation to the order of business be suspended, to enable him to move the following resolution: *Resolved*, That the rules of the House be so far suspended that the Committee of the Whole House on the state of the Union be discharged from the consideration of Senate bill (No. 127) entitled 'A bill to provide for the collection, safe-keeping, transfer, and disbursement of the public revenue,' from and after Monday next, unless the same shall be reported at earlier day; and that said bill, with such amendments, if any, as shall have been adopted, be taken up in the House on Tuesday next, at 10 o'clock, a. m. and be the special order until finally disposed of, reserving to said committee the right, according to the rules of the House, to report the same sooner, if the discussion shall terminate.' The question was put on Mr. CLIFFORD's motion to suspend: Yeas 126, nays 54. Among the yeas were Mr. RHETT and every Democrat in the House. Upon the question that the House do agree to Mr. CLIFFORD's resolution: Yeas 124, nays 58.—Among the yeas were Mr. RHETT and every Democrat in the House."

Thus, gentlemen, it appears that when you profess to report the proceedings of the House, you hold yourselves at liberty to intersperse them with matters which do not occur at the time in the House. The former opinions or conduct of those opposed to you politically, may be introduced for the purpose of weakening their positions, or even for, a far inferior purpose—to lower them personally in public estimation, by an effort to convict them of personal inconsistency. If you had thought proper to report only what was said on this occasion, you might have better represented my reply to Mr. STANLY, or have noticed my request to the House to allow Mr. DAVIS to proceed. If the resolution had been read by Mr. DAVIS, it would have given me the opportunity I desired, of show-

ing what I asserted—that I had never voted for any such resolution as that against which I protested. Since you have thought proper virtually to make this charge in your report of the proceedings of the House, I claim the privilege through your columns of refuting it.

In the first place, you have not quoted the whole journal. You say: "The question was put upon Mr. CLIFFORD's motion to suspend the rules." You should have added: "Two-thirds voting in the affirmative, the rules were suspended." From the point at which you stop, it may be inferred by a reader unacquainted with parliamentary rules, that a mere majority suspended the rules; and, therefore, in this respect, that the resolutions of Mr. CLIFFORD and Mr. SERGEANT were alike. This is not so. A rule of the House, in conformity with an express standing rule, existing immemorably, I believe, can only be suspended by a vote of two-thirds; and on this occasion this vote was obtained.

In the second place, you say: "Amongst the yeas were Mr. RHETT and every Democrat in the House." An inference from this statement might be made, that Democrats only voted for Mr. CLIFFORD's motion to suspend the rules, and afterwards for his resolution; and that they carried those propositions. This is not so. A large number of the Whigs, without whom neither the motion nor resolution could have been carried, voted for them with the Democrats. Amongst them were Mr. BIDDLE of Pennsylvania, Mr. BRIGGS and Mr. CALHOUN of Massachusetts, Mr. UNDERWOOD of Kentucky, Mr. CHINN of Louisiana, Mr. JOSEPH WILLIAMS of Tennessee, Mr. RANDOLPH of New Jersey, and many others. If the motion or resolution had been contrary to parliamentary usage, or an infringement of the rights of the minority, these gentlemen would have been amongst the last who would have voted for, or carried them.

The distinction between this resolution, and the resolution of Mr. SERGEANT against which I protested—kept out of view in your report—is this: The resolution of Mr. CLIFFORD was a resolution to suspend the rules, which can only be carried by a vote of two-thirds of the House. Mr. SERGEANT's resolution was not of this character. By a standing rule of the House, made for the protection of the minority, as all rules are, and always existing as a rule of Congress, the regular course of business cannot be altered or changed but by a suspension of the rules. This regulation was made expressly to protect the minority against the caprice or tyranny of the majority. It was supposed, with this guard to their rights, requiring a co-operation of the minority itself to suspend or change the

rules by a vote of two-thirds, their rights were safe—imposition or oppression by a majority was impossible.

But how is it now with the new rule introduced at this session, for the first time, into Congress; and in pursuance of which, the resolution proposed last Saturday was passed? Was it a resolution to suspend the rules, requiring the assent of the minority, by a vote of two-thirds, to make it operative? It was a simple resolution—"That, at 4 o'clock this day, (altered afterwards to Monday next,) all debate in Committee of the Whole on the bill No. 1, to incorporate the subscribers to the Fiscal Bank of the United States, shall cease," &c. It was an enforcement of a rule which had been made a standing rule of the House, expressly ordained by the majority, to get rid of the inconvenience of the *two-thirds* hitherto required to suspend the rules, and empowering a mere majority to stop debate at any time in the Committee of the Whole, and force a bill through the House by the aid of the previous question. It was against this new and tyrannical rule, which was ordained expressly for the purpose of putting aside the ancient rule, in conformity to which, Mr. CLIFFORD's resolution was offered last session, with my concurrence and support, that I spoke and protested. How, then, can it be said, with any propriety, that these resolutions are in any sense the same—when one was for a suspension of the rules, the other was to enforce a rule existing; one required a vote of two-thirds of the members to carry it, the other a mere majority; one, in fact, was made to defeat the operation of the other, and to overthrow that protection to the minority the other secured? On the great point to which we objected, the two resolutions, instead of being similar, are in reality antagonistical.

And look, too, gentlemen, to the circumstances under which these resolutions were introduced, containing, as they do, a most vivid exemplification of their operation and principles. The Independent Treasury bill—for the purpose of drawing which out of the Committee of the Whole, Mr. CLIFFORD introduced his resolution to suspend the rules—had been under debate one month and five days, consecutively; and the resolution proposed to allow three more days for continued debate. Scores of speeches had been delivered on it; and, by a computation made by a member then on the floor, two-thirds of the time taken up in the debate had been consumed by the minority opposed to the bill. It was this fair scope for free debate—the ample time and liberal indulgence given to the minority to express their opinions, that doubtless influenced those members of it who joined the majority, in suspending the rules, to bring the debate to a close. Now, turn to the circumstances under which the resolution on the Fiscal Bank bill was introduced last Saturday. The amendment, which was the bill on which we were to vote, containing thirty-eight pages, had been introduced into the House the day before, not after examination by a committee of the House, but by a member, on his individual information and responsibility. The bill, yet wet from the press, is on our tables; and it is gravely proposed to take it out of the Committee of the

Whole at four o'clock that day, and pass it. The excitement this proposition obviously produced in the House, induced the mover, I presume, as a signal specimen of Whig generosity, to give one day longer; and he changed the time to four o'clock on the Monday ensuing. The Independent Treasury bill, contained a very trifling appropriation of money for erecting safes, vaults, &c; but this bill established a mighty corporation, and contained an appropriation of fifteen millions of dollars. And mark how beneficial to the minority was the few hours allotted for discussing this gigantic measure, striking at the first principles of the Constitution, and penetrating every corner of the land. Not a Democrat was able to utter one word in the debate—not one could obtain the floor. The whole debate, short as it was, and worthless as was the opportunity, fell entirely from the lips of the majority. Who will say, under such circumstances, even if the principles on which both rested were the same, that those who voted for Mr. Clifford's resolution, stand on the same platform with those who voted for the resolution of Saturday? Practically, under the former resolution, there was free, almost licentious debate. Under the latter, practically, there was an effectual gag to the minority. Neither in operation, circumstances, nor principle, then, can they, with any propriety, be said to be the same. Under the rule adopted by this Congress, the ancient security enjoyed by a minority to the right of free debate in Committee of the Whole, is taken away. They have no rights in the matter. They speak but by the permission of a majority: and permission, gives no right. When a majority, even of one only, permits, they may speak; and when it orders otherwise, they must be dumb. The enforcement of this rule in this case demonstrates, that if a majority chooses; they may pass any measure through the House of Representatives, without one word of debate being uttered concerning it. It allowed but six days, (and it may as well, on so great a measure, have allowed not one,) to discuss the Distribution bill, which had never before been considered in the House, and which disposed of hundreds of millions of the people's property. It allowed but five days for the consideration of the Loan bill, borrowing twelve millions of dollars more. It allowed but one week for the despatch of the first Bank bill, sent us by the Senate, where it was considered one month. If such legislation was consistent with our form of Government, it would be sufficient to turn away all nations from us in disgust and contempt. Against such legislation we have remonstrated. Against such tyranny by a majority, as one of the minority, I have protested.

In one of the grounds of the protest I made against this rule, I maintained, that it "was a right in the people of the United States, inherited from their ancestors, and enjoyed and practised time immemorial, to speak through their Representatives to the taxes imposed upon them." The manner in which this right was enjoyed, was, by referring all bills, laying taxes or appropriating money, to the Committee of the Whole House; that is, the whole House resolves itself into a committee. The advantage is in the privileges of this committee. There, the previous

question (the form of cutting of all further debate) does not apply. A free conference takes place, and debate is unlimited and unrestricted. On the great and vital subject of taxes, and the appropriation of them, it is not presumed that there can be too much deliberation or consideration; and those who are to pay the taxes, the people, have the right freely to discuss the manner and the extent to which they shall be laid, and the purposes to which they shall be applied. Permit me briefly to show the origin and nature of this great principle of Anglo American liberty.

On the 18th of February, 1667, coeval with the establishment of liberty in England by the Revolution of 1663, by which James the Second was expelled from the throne, the Commons of England resolved:

"That if any motion be made in the House for any public aid or charge upon the people, the consideration and debate thereof ought not presently to be entered upon; but adjourned till such further day as the House shall think fit to appoint; and then it ought to be referred to the Committee of the Whole House; and their opinions be reported thereupon before any resolution or vote of the House do pass therein."

Upwards of a century afterwards, in 1784, Mr. Hatsell, in his *Parliamentary Precedents*; in commenting on this rule, observes:

"The House of Commons have, with great wisdom, imposed these rules and resolutions upon themselves in the exercise of that great and important privilege, 'the sole and exclusive right of granting aids and supplies to the Crown;' in order, as it is their duty when they are imposing burdens upon their fellow subjects, to give every opportunity for free and frequent discussion,) that they may not, by sudden and hasty votes, incur expenses, or be induced to approve of measures which might entail heavy and lasting burdens upon themselves and their posterity. It is upon this principle, that as long ago as the year 1667, the House laid down for a rule 'that no motion or proposition for an aid or charge upon the people should be presently entered upon'—that by this means, due and sufficient notice of the subject should be given, and that the members should not be surprised into a vote, but might come prepared to suggest every argument which the importance of the question may demand. Another part of the same order—'that such propositions shall receive their first discussion in Committee of the Whole House'—is no less wise and prudent. *There every member may speak as often as he finds it necessary, and is not confined in delivering his opinions by those rules which are to be observed when speaking in the House; and which in matters of account and computation, would be extremely inconvenient, and would necessarily deprive the House of much real and useful information. This mode of proceeding likewise gives an opportunity of a further and more mature deliberation, when the resolutions of the committee are reported; to which the House may either not only agree or disagree, but if they are of opinion that the subject has not been sufficiently canvassed, they may recommit the whole or any part of the report, for the purpose of receiving more accurate information, or more narrowly inquiring into the nature and expediency of the proposed measure. For these reasons, this resolution of the 18th of February, 1667, has been, particularly of late years, very strictly adhered to; and it appears to be one of those rules which, as it has its foundation in prudence, and an attention to the ease of the people, ought to be, in all instances, invariably observed."*

Here is the origin of this great rule, with the reasons for its exercise and continuance in the British Parliament to the present day. And I beg you to remark, that instead of its being relaxed in its administration, it has been, according to the testimony of Mr. Hatsell, '*particularly of late years, very strictly adhered to.*' The reason is obvious. In proportion as the British Government has become more free, and the interests of the people more regarded in its legislation, in the same proportion has this great principle of parliamentary law, introduced by the people for their protection and self government, been more sacredly observed. It has become sanctioned by usage and hallowed

into a great principle of liberty; and if any Premier or King of England, at the present day, should dare violate it to one half the extent this Congress has witnessed, it would produce a revolution as signal as that of 1663. Nor has it been confined alone to bills of supply. "The speech, messages, and others matters of great concernment are usually referred to the committee of the whole House." 6 Grey, 311. There the inestimable privilege of free debate is obtained, untrammelled by technical rules. There the representative of the people can speak to the taxes to be imposed upon his constituents again and again, unchecked by the previous question. Suggestions are freely made—time for investigations given, that all the light and information which the subject admits of, may be freely imparted and freely received. This is English parliamentary law, brought by our ancestors with them into all our colonial assemblies, as that rule, in the enactment of laws, above all others, the most sacred to liberty and protective of the rights of the people. It has been invariably practised on, as far as I am informed, by every State Legislature in the Union, excepting where the previous question has not been adopted as a rule of governance, and then it may be unnecessary. It has been as inviolably observed by every Congress which has sat in the United States, from the Revolution to the Congress of June, 1841. Even the Federalists of '98, disregarding as they showed themselves to be of popular rights, in the enactment of the alien and sedition laws, whilst they assailed the freedom of the press, left untouched the right of free debate in Congress. The liberty of speech to the people and their representatives, was unassailed or abridged. For the first time since 1667, this rule has been set aside—not by Englishmen, or in a Monarchy—but in a Republic, by the descendants of Englishmen, claiming to be freer than they.

Free debate no longer exists in the House of Representatives of the Congress of the United States. The people, through their Representatives, have no longer the right of speaking to the taxes imposed upon them. Tyranny, in the shape of a majority, is erected in the Capitol. The new reign of terror is begun.

I have remarked, gentlemen, that whenever the guillotine, cutting off debate, has fallen on a bill, you have raised a shout of congratulation at its speedy passage. The patriotism of the deed is extolled, and the people, are bid to rejoice. If you have thought upon this subject, will you be so good as to inform me, how liberty can be maintained by a people, if the liberty of speech, in their deliberative assemblies, is destroyed? Why did Cromwell turn his Parliament out of doors? Was it not because he could not restrain their speech? Why did Napoleon introduce his *gens d'armes* into the House of Deputies? Was it not because he feared their remonstrances and appeals to the people, against his meditated usurpations? Could these tyrants have made the Representatives of the people dumb,—could they have silenced debate by rule,—what more could they have desired or demanded? For their purposes, perhaps, it were better such representatives should have remained than be expelled. They both had

obsequious and slavish majorities to carry out their behests. But they, unfortunately, did not live in our day, in the glorious light of our example. They did not comprehend the first great reform of a Federal majority in the Congress of these United States, to gag by rule; and therefore, they found it necessary, to gag by the sword. And have you lived so long in the atmosphere of this Capitol as to suppose, so far as liberty is concerned, that the one form of suppressing debate, is less objectionable than the other, if equally effective? Or do you imagine it to be possible, that if the one is submitted to, the other, so soon as it is convenient, will not be resorted to? How have all monarchies arisen from Republics? Do you know—can you imagine, but two steps? First, the control of the majority; and, second, the silence and subjection of the minority. And can you conceive a more dexterous method of destroying a minority, than by destroying its use? If it is silent, what use is it? How can the abuses of a majority, or the designs of a tyrant against the liberties of the people, be exposed in a deliberative body, if the minority is gagged? Is it the wont of a majority or an ambitious pretender, to lay bare before the eyes of the people, the true character of their measures; or do they not rather seek to commend them, by all the arts and sophistries that mental ingenuity can devise? To do wrong is the great difficulty. To give it the appearance of right, with the powers belonging to us, is easily accomplished. To destroy or silence a minority in a popular representative Government, is to destroy liberty itself. The minority is the great check, the sole restraint on a majority; and if a majority is unrestrained, what is it but a despotism? Can there be a better definition of a despotism, than unrestrained power?

And then, have you thought at all, in connection with this subject, of the people, these members of Congress, composing the minority, represent? How come these men in the Capitol? They stand, each of them, the embodied political power of fifty thousand people. In them selves, as men, they are comparatively nothing; but as representatives, they may wield a power, "as terrible as an army with banners." When you silence them, you silence the people they represent. For what purpose were they sent here? Was it not by *speech*, and *speech only*, to endeavor to preserve the Constitution—to protect the people they represent from oppression and injustice, and promote equal liberty to all? Why should they stay, if speech is denied them? Why should the mockery of representation be preserved, when all its power, its vitality is destroyed? Why should the people send them, merely to subserve the purposes of a majority, and give the air of authority to edicts which they are the dumb instruments of registering? With such power in a majority, exercised as it has been, when not three months old, the very object of representation, is destroyed. The people represented by the minority, do not rule themselves. They are ruled absolutely, without the poor privilege of remonstrance or complaint through their representatives, against laws passed for their governance, in their opinion, unconstitutional in principle; and, if unrepealed, fatal to their liberties.

I have no doubt you have been astonished at the patience, with which the minority in Congress have submitted to this state of things. I tell you, it were easier to have deluged the Hall of Representatives in blood, than to have submitted to this imposition. It was not impossible to have stopped utterly all legislation, until that rule was rescinded. But, after due deliberation, it was determined to submit, at least for the time; because, we believed, that the people would come to the rescue. We looked over the whole scope of the policy of the party in power—their tyrannical proceedings here—their unconstitutional and corrupt legislation for the country—and we have not doubted their speedy overthrow. Our policy, therefore, has been, with calmness and dignity to await the coming of the people—that people, whose rights through us have been invaded and insulted—to whom the Constitution and the Government belongs—"whose we are, and whom we serve." They are sufficient for themselves; and if they are not, who can be sufficient for them? Who but the people, can make the people free?

Should people and Representatives both submit to such legislation, it needs no prophet to foretell the consummation. Let no man suppose, that good can result from the practice of evil, to those who practise it. The Almighty often scourges a nation for its offences; and he may permit the utmost criminality in the instrument of his chastisement, but in the end, the instrument and the chastised suffer both alike. Suppose the minority in Congress so debased as to submit entirely and forever to the tyranny of the majority, and the people they represent, as abject as they, acquiesce in a mere nominal representation,—mute, meek, slavish instruments for recording the mandates of a majority, hatched in whispers and engendered in caucus corners;—will the matter end there? Can a pure and free majority, (admitting them to be pure and free whilst practising oppression,) coexist with a debased minority? Will not the corrupters, soon become corrupted—the enslavers, enslaved? Do you not see, that at every turn of public affairs, new parties are formed, or new combinations from the old parties, created? And how long do you think a debased and corrupt minority, under the continual shifting of parties, will remain inferior? Do men depraved adhere to principle, and avoid power? Will they not seize upon the differences of the majority to elevate themselves? And when the power of the State is in their hands, how will it be—how must it necessarily be used? Self-respect, will be gone. Respect and reverence for the people, will be gone. With the absence of representative responsibility, (destroyed, in the uselessness of representation,) all moral responsibility will be merged in numbers. The love of self, and the lust for power, will prevail. Combinations will be made to subserve the objects of individuals, and mutual concessions, at the expense of all principle, for mutual interests. Then, when the harvest of corruption is ripe, and universal distrust exists amidst a general depravity, a Cromwell or a Cæsar will be hailed as a deliverer. If every other maxim in Government shall fail, this shall remain for ever true—to be free ourselves, we must permit others to be free.

"If it were done, when 'tis done, then 't were well
It were done quickly."

This is the motto, by which the majority in Congress, have driven through their measures at the present session: but remember, these were the words of a murderer, who, whilst stealing to his fell purpose, could whisper—

"Thou sure and firm set earth

Hear not my steps, which way they walk, for fear

The very stones prate of my whereabouts."

The Constitution may be murdered at this session—murdered in your Distribution bill—murdered in your Tariff bill—twice murdered in your Bank bills;—but the people may yet arise, "with twenty mortal murders on their crowns, and push us from our stools." He who thinks that by multiplying wrongs, resistance to them will be weakened—that by haste in execution, guilt can be disguised—has but the wretched morals, and poor policy, of a fearful robber. In a mighty country like ours, whose step is the advance or retrogression of nations, whose every deed should look to the ages of futurity—to eternity itself, so far as this world is concerned, where they are to be finally developed in their consequences—to suppose that such a people, with such destinies, are to be caught in a trap of accidents, or tied up by the willow withs of precipitate legislation, or gagged by rules, is too ridiculous to be even contemptible, were it not, that all wickedness is to be pitied or despised. We are great—and to be made far greater—mightier than our thoughts can grasp, if true to our destinies, by weighing coolly and cautiously every act of legislation, by a faithful observance of the Constitution, and by holding fast to every guarantee of liberty transmitted to us by our ancestors, or discovered in the course of our own experience. Ours will then be the greatness of justice, truth, and liberty, combined.

The protest of Mr. RHETT, which he asked to be recorded on the journals of the House, and which the Speaker refused, as out of order, was as follows:

1. Because the rule by which the resolution is proposed, is a violation of the spirit of the Constitution of the United States, which declares that the freedom of speech and of the press shall not be abridged by any law of Congress.

2. Because it destroys the character of this body as a deliberative assembly: a right to deliberate and discuss measures being no longer in Congress, but with the majority only.

3. Because it is a violation of the rights of the people of the United States through their Representatives, inherited from their ancestors, and enjoyed and practised time immemorial, to speak to the taxes imposed upon them when taxes are imposed.

4. Because, by the said rule, a bill may be taken up in Committee of the Whole, be immediately reported to the House, and by the aid of the previous question, be passed into a law without one word of debate being permitted or uttered.

5. Because free discussion of the laws by which the people are governed, is not only essential to right legislation, but is necessary to the preservation of the Constitution and the liberties of the people; and to fear or suppress it is the characteristic of tyrannies and tyrants only.

6. Because the measure proposed to be forced through the House within less than two days' consideration, is one which deeply affects the integrity of the Constitution and the liberties of the people; and to pass it with haste, and without due deliberation, would evince a contemptuous disregard of either, and may be a fatal violation of both.

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